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Supreme Court, U.S.
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No. 02-524

In The
Supreme Court of the United States

JANETTE PRICE,

Petitioner,

v.

DUYONN ANDRE VINCENT,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

JOINT APPENDIX

DAVID A. MORAN
Counsel of Record
Suite 3300,
Penobscot Building
645 Griswold
Detroit, Michigan 48226
(313) 256-9833
Counsel for Respondent

ARTHUR A. BUSCH
Genesee County Prosecuting Attorney
DONALD A. KUEBLER,
Chief, Research, Training & Appeals
JOHN C. SCHLINKER,
Deputy Chief Assistant Prosecutor,
Counsel of Record
100 Courthouse
Flint, Michigan 48502
(810) 257-3854
Counsel for Petitioner

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RELEVANT DOCKET ENTRIES

GENESEE COUNTY CIRCUIT COURT

* * *

03/31/92 TRIAL BY JURY CONTINUED JURIES HERETOFORE EMPANELLED RETURNED AND HEARD FURTHER PROOF AND ALLEGATIONS IN PART. MOTIONS BY ALL ATTYS FOR DIRECTED VERDICT. COURT AMENDED CT: I OPEN MURDER TO 2ND DEGREE MURDER. CT: II FEL. FIREARM STAY THE SAME. MOTION BY C. ODETTE TO HAVE MARCUS HOPKINS & D. VINCENT JURY REMOVED FROM COURT ROOM WHILE D. PERKINS IS ON TRIAL AND VICE VERSA. MTN GRANT ED. COURT EXCUSED BOTH JURIES DEFT PERKINS JURY TO RETURN TOMORROW MORNING @ 8:30 A.M. AND DEFTS VINCENT & HOPKINGS [sic] TO RETURN TOMORROW @ 10:00

04/01/92 TRIAL BY JURY CONTINUED FURTHER PROOFS AND ALLEGATIONS HEARD IN PART. TRIAL ADJ. UNTIL TOMORROW MORNING JP 1

04/02/92 TRIAL BY JURY CONTINUED FURTHER PROOFS & ALLEGATIONS HEARD IN FULL. ARGUMENTS OF COUNSEL. TRIAL ADJ. UNTIL TOMORROW MORNING. JP 1

04/03/92 VERDICT FORM FILED. (VINCENT) TRIAL BY JURY CONTINUED FREEMAN, VINCENT, HOPKINS JURY RETURNED & HEARD THE CHARGE OF THE COURT. JURORS F-2343 J. WOLFE, D-2258 D. DOUGLAS, EXCUSED FROM FURTHER DELIBERATION. VERDICT OF THE JURY AS TO MARCUS HOPKINS CT. I

VOLUNTARY MANSLAUGHTER, CT. II GUILTY FELONY FIREARM. AS TO DEFT. DWYONN VINCENT. CT. I GUILTY MURDER 1ST DEGREE. CT, II GUILTY FELONY FIREARM. SENT. DEF. TO MAY 13, 92 @ 2:30 P.M. BOTH DEFTS. REMANDED. JP1

* * *

PEOPLE OF THE STATE OF MICHIGAN IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

vs

DUYONN ANDRE VINCENT,

Defendant.

File No. 91 45890 FC

(Filed March 31, 1992)

VOLUME IV

BEFORE THE HONORABLE DONALD R. FREEMAN,

CIRCUIT JUDGE

FLINT, MICHIGAN – TUESDAY, MARCH 31, 1992

APPEARANCES:

For the People:

Daniel Stamos, (P23505)
Assistant Prosecuting Atty
100 Courthouse
Flint, Michigan 48502
(313) 257-3232

For the Defendant:

Christopher Odette (P27387)
Attorney for Defendant
1036 South Grand Traverse
Flint, Michigan 48502
(313) 232-9460

Recorded by:
Victoria J. Hunt, CSR 2251
Transcribed by:
Victoria J. Hunt, CSR 2251
Diane Baker, CER 5276

* * *

[106] we're going to do this without Carol Horvath.

THE COURT: Yes, that's what they're saying.

MR. STAMOS: Which, I think it's the easiest way to do it. I would just like the juries made aware that what I read into the evidence was the preliminary examination and can be used as substantive evidence.

THE COURT: You need nothing else to be presented to the jury then at this point?

MR. STAMOS: No, –

THE COURT: You're willing to close?

MR. STAMOS: Yes.

THE COURT: All right. Okay, I'll tell the jury. I'll tell them at the appropriate time when we have the instructions. Okay?

All right, now we're, have you settled everything for the time being?

MR. STAMOS: I think we have.

THE COURT: So I can go on to your motions? I'll be happy to listen to your motions if you please.

MR. ODETTE: Your Honor, with respect to Mr. Vincent I would ask the Court to take into consideration a

motion for directed verdict as to the charge of First Degree Murder. I would submit that the evidence looking at it in a light even most favorably to the prosecution has failed to sustain the elements of premeditation and [107] deliberation. The evidence would suggest that Mr. Vincent went to the highschool, did not go there with the express purpose of committing a crime of taking life. There's no evidence to suggest in any event that this was a thought out in advance action, even if you accept Mr. Stamos's proposition that he went to the car or went into the car with the intention to shoot one of the people who were present there. The evidence all suggests this was a spontaneous situation. There's, it all happened quickly, every single evidence is, every single witness has indicated that. Deliberation is an essential element to First Degree Murder. Deliberation requires that there be some indication that the defendant or the accused have the time of the shooting consider the pros and cons of his action, carefully considered the act, what he was doing. And I would suggest from this record that that element and premeditation are not present and would request the Court direct out on the. . .

THE COURT: You want to wait for the ambulance to go by please? Okay, you can proceed if you like.

MR. ODETTE: I would ask that the Court direct out the, permit the case to go to the jury on the crime of Second Degree Murder and any other lesser included offenses that would be appropriate to that but that the [108] Court enter a directed verdict on behalf of Mr. Vincent as to the First Degree Murder. Thank you.

THE COURT: Okay. Around the table if you like.

MS. CUMMINGS Your Honor, on behalf of Marcus Hopkins I make directed verdicts on the following arguments that the same logic Mr. Odette has presented on behalf of Mr. Vincent. Certainly it applies to Mr. Hopkins. There's nothing in the testimony to indicate that he had any intention. Or first of all there's nothing in any testimony that while at Hamady High School he possessed or shot any of the weapons that have been discussed. And the prosecutor to, to draw him in on that would have to indicate through some evidence that he shared some first degree intent. And that hasn't been demonstrated to the Court so I'd request that first degree be directed out.

As to the Count on the weapon I believe there's been no showing that while at Hamady High School he possessed a firearm. The only thing that you now have allowed in through those preliminary exam statements is Gill's testimony there that Marcus Hopkins said to Vincent "where are the bullets". That's the only statement he makes that's in evidence in this case regarding to bullets, guns. And at the time of the offense, at the time of the shooting, the murder, the claim of murder that he had [109] anything to do with that. He, he simply was present. My argument stands on the, the legal rationale of mere presence that doesn't bring him into the realm of evil companions unless he shares their same thought. I think that that hasn't been demonstrated so specifically I would like first degree out and, and secondarily I would like the firearm Count directed out.

THE COURT: Okay. Counsel?

MR. DOLL: Your Honor, with respect to my motion for directed verdict of acquittal. It's primarily directed at the charge of First Degree Murder and cocounsel

correctly stated that the element of premeditation on behalf of Mr. Perkins is missing in this matter.

In his case there's no preparation, there's no deliberation on his part. In fact the testimony shows that he didn't even get into the automobile which contained the person that did the shooting in this case until approximately five minutes before the actual shooting took place in the Hamady Brothers parking lot. There's no testimony that he was involved in getting the guns, other then the testimony of Derrick Gill. There's no testimony that he was getting any of the ammunition other then the testimony of Derrick Gill. No one else testified to that.

So, in his case there is no testimony showing premeditation. There's no preparation, there's no [110] deliberation on his part that would constitute First Degree Murder. So clearly, Your Honor, a motion for a directed verdict on First Degree Murder on behalf of Mr. Perkins is clearly in order. And the law in this case is that the Court in passing on a motion for a directed verdict acquittal must 1) consider only the evidence which was introduced at the time that the motion was made, which we have in this case evidence from the prosecuting attorney. 2) View the evidence in light most favorable to the prosecution. And 3) determine whether that evidence would justify a reasonable man including that all elements of the crime were established beyond a reasonable doubt. This fact is not the case. Premeditation is missing from that. There's no evidence of premeditation in this, in this matter. And I would cite to the Court the case of *Jackson vs Virginia* in the United States Supreme Court case, 433 U.S. 307, Michigan case on that point would be *People vs Hampton* 407 Supreme, Michigan Supreme Court Reports 354, and *People vs Fudge* 66 Michigan Appeals at 625.

The question, I guess is whether or not there's any evidence, real or circumstantial, on which you as the court or, can make a determination that a jury can reasonably infer all the elements in this case or underlying all the elements of the crime charged citing *People vs Burs*, 62 Michigan Appeals 204. And all the [111] elements would include premeditation.

Your Honor, that's missing in this case with respect to the case against Mr. Perkins. There is not elements that he was involved in any type of premeditated murder. As a matter of fact its clear from the, the evidence presented that the, the bullet, in fact, that was shot that killed the deceased was accidental. It, it hit a friend of the, the other two codefendants that are charged. So with respect to that there's no case of First Degree Murder against, against my client Dameon Perkins and I would ask that the Court to grant my motion for a directed verdict of acquittal on that charge.

THE COURT: Prosecution?

MS. CUMMINGS: I just want to join in the arguments and citations of Mr. Doll.

THE COURT: Okay, fine.

MR. STAMOS: Yes, first of all, as to the intent aspect of it I know we've all heard it transferred intent so I wasn't even going to speak to that, I thought that was obvious. But talking about Defendant Vincent and Defendant Perkins first of all, and talking aiding and abetting action type of situation with circumstantial evidence and with direct evidence as all of them, but especially in terms of Vincent and Perkins. We've got testimony that, that Vincent went home and picked up at [112] least one gun

probably two, the inference is probably two but direct testimony had one. That there's testimony that he picked up 'cause he was expecting trouble. We've got testimony from people in two different cars, not in the Vincent car, or these people car but two different cars that went up there that they were going up there to meet girls and to fight. That combined with Vincent's testimony that he was expecting trouble I think infers having the gun for some purpose other than honorable or legal. We have testimony that Vincent shot the gun at the North Flint Plaza to see if it worked in the air. That they went back up to Hamady the second time. They went the first time then went home and got the gun. That's important. That they went back up to Hamady. And I'm talking about Vincent with the gun. That there was an argument. Folks up, folks down. The testimony they surrounded the car, at least that their group, not directly Vincent but their group which goes along with the fact that they were up there to fight. That all four people in the red car including Derrick Gill got back in the car. That Vincent was identified along with Perkins as being in the back of the car. The hatch was popped open and at that point after the hatch was popped open, or at least lifted up, Vincent and Perkins were back there and both fired the gun or guns in the direction of the Hamady students that had been involved in the argument. [113] I think there's plenty of evidence showing that Marquis Jones was in that area too and the obvious inference is that he did get hit by a mistake but the guns were pointed in the direction of the Hamady students.

Even, even Vincent's actions afterwards in getting rid of the one gun, busting it up in his statement, busting it up and throwing it away in little pieces, as well as just

turning over the long barrelled gun go to show a specific intent that he had with that gun.

Perkins was showing the long barrelled gun to people on the way to Hamady. We had two people testify to that. One person said he had it right in his pants, was showing them that gun on the way to Hamady school the second time. There's testimony that he went to a home or directed them to a home to get bullets. And there's also testimony that the long barrelled gun took bullets that were different from the long twenty-two bullets that we have into evidence. So that kind of makes sense that he would be directing them to get bullets.

And then along with that we have the testimony the same as with Vincent, that the hood was popped up, both of them had went back after this argument, went back got in the car, got in the backseat and the hood goes up. And then from both people. From Perkins and from Vincent both guns pointed in the direction of these Hamady [114] students. The shots fire. Now Perkins shot, as testified to, at another car even after they left the school going down Carpenter Road. So it even more solidifies his intent. And I think when you look at all of the circumstances about how they went back to the car after this initial argument, them going up to the school with these guns, and with the intent that can be inferred, as to why they went up there, and I'm not going over it in terms of making a final summation to the jury. But the point is deliberation, reflection, premeditation can be arrived at in a matter of seconds. it's up to the jury to make that time.

I think the Court should look in terms of its decision at the evidence most favorable, in a light most favorable to

us. And when you have these people who went up to this school with these guns and they get in an argument and then they walk back to this car and they get in the back seat, the two with the guns, pop up the hatch and then shoot that that certainly gave them enough time to reflect and premeditate on how they were using that gun. And they pointed it in the direction of the Hamady students. It doesn't matter that another person was killed, the intent to kill is reflected by how they used the guns and the premeditation deliberation and is reflected by how they went about using the guns, going back [115] to the backseat of a car, popping up the hatch.

Now as to defendant Hopkins, we've got – my basic position to him is that he was a part of this whole enterprise, and I realize he has to have some positive action. Not just being there is not, enough I understand that. We have testimony this gun was his, the long barrelled guns. We have testimony that he requested the ammunition when they were at the Vincent home to be gotten. We have testimony that he shot when they were at the North Flint Plaza in seeing if the guns worked. We have testimony that Hopkins shot his long barrelled gun or his gun at that point. We have testimony that he was with this whole group of people when they were talking about, or the inference would be that they're talking about going up there expecting trouble. That's why they went back to get the gun, that's why he had to get the ammunition. So it shows a certain state of mind that he was aware of. That is Hopkins. Especially when he asked if the ammunition be gotten and the gun being his. There's a certain inference there. And that he was out of the car, I think it's important to, to realize that he was in the car when they went to get bullets with Perkins. He was out of the car at

Hamady. It wasn't like he just stayed in the car, he was out of the car during this altercation. And it was testified that all four men got back into the car at the [116] same time and then it was requested that the hood be popped or the hatch be popped open. Now he's in the driver seat at that time. Knowing everything that's went on beforehand and that's important. And that the hatch was then popped up. The shots were then fired and then he, Hopkins, drove away. It's not like being completely ignorant of anything that went on before and then just jumping in a car and driving away. He knew these things before, he had taken a part. It was his gun, he had shot it.

Also he took part in getting rid of the gun. There has to be a reason for that. He took part according to testimony on getting rid of the two guns. And then I think that his statement, well not being a major portion of the case certainly does have some bearing in that when he was asked to give a statement he denied knowing anything about the gun, seeing anybody shooting, denied anything about a hatch being opened, anything in reference to that car and guns in that car he denied. And at that time I think that that can be inferred that he had, it can be inferred a lot of ways but it certainly in one way can be inferred that he had a measure of guilt on his mind as to his participation. But we have the other facts that I've talked about that directly point to his aiding and abetting and participating in the crime.

THE COURT: Anybody else?

[117] MR. ODETTE: No, Judge, I have nothing else. Thank you.

THE COURT: Nothing else? Well my impression at this time is that there's not been shown premeditation

or planning in the, in the alleged slaying. That what we have at the very best is Second Degree Murder. I don't see that the participation of any of the defendants is any different than anyone else as I hear the comment made by Mr. Doll about the short time in which his client was in the vehicle. But I think looking at it in a broad scope as to what part each and every one of them played, if at all, in the event that it's not our premeditation planning episode. It may very well be the circumstance for bad judgement was used in having weapons but the weapons themselves may relate to a type of intent, but don't necessarily have to show the planning of premeditation. I have to consider all the factors. I think that the second Count should remain as it is, felony firearm. And I think that Second Degree Murder is an appropriate charge as to the defendants. Okay.

MR. DOLL: Thank you, Your Honor.

THE COURT: Now are we ready then for our jury?

MR. ODETTE: Judge, if, I'd just like to take up one more thing. The last thing and that would be the, [118] actually the procedure that would be involved here on out. It's my understanding looking at case law that the accepted procedure would be that Mr. Doll's jury would not remain in the courtroom during the defense of either Mr. Hopkins or Mr. Vincent and vice versa. If Mr. Doll chooses to put in a defense that our jury would be removed from the courtroom also and that's my understanding of the case law and I've . . .

THE COURT: My general impression is you're in charge of your own defense. You should be able to select your own jury. I've turned to the prosecutor at every time

and I've said the same thing to him. Do you want both juries or don't you. I mean you've got your proofs, you want to present them, you should be able to choose your audience. And I think that here you are, you've got a situation where you're arguing obviously on behalf of your individual client, you should be able to talk to the jury that's involved. Basically I think that's the way it ought to be handled. So we treat everybody alike.

MR. ODETTE: Correct. However that, and I'm, if I could cite a case to Your Honor. *People vs Brooks* at 92 Michigan Appeals at 393. That upheld the idea that both juries could be present during the prosecutors direct case only. But that only the jury hearing the [119] particular case would be present . . .

THE COURT: Well haven't I already said this?

MR. ODETTE: Is that what you said?

THE COURT: I thought I heard myself say that.

MR. ODETTE: I'm sorry, Judge.

THE COURT: Maybe I wasn't hearing my words.

MR. ODETTE: Maybe I'm getting to the point I'm arguing with . . .

THE COURT: No, I said the defendant should be able to select the jury they want to address.

MR. DOLL: I guess then it . . .

THE COURT: Therefore that's your choice.

MR. DOLL: I guess it's a housekeeping –

THE COURT: So if Mr. Doll if you say you want the jury that involves your man only to hear your defense, fine let them hear it. And if Ms. Cummings and Mr. Odette want that to be done, fine that's their choice.

MS. CUMMINGS: I think I understand that, Judge.

THE COURT: I don't think I was ambiguous.

MR. ODETTE: Okay, I'm sorry, Judge. I . . .

THE COURT: I, you know I try to do things by common sense. What's a sensible approach to this subject. [120] I let one side decide as they present the evidence who should hear the evidence involving them if there's no conflict and no statements that would be prejudicial to one of the defendants. Then when you're time comes, you want to make a pitch to that jury that involves your person and you think there's some value in doing that, fine, I'll give you the chance to do it.

Now who wants to go ahead?

MR. DOLL: It's a housekeeping problem.

THE COURT: That's it.

MR. DOLL: Who wants to go first I guess.

THE COURT: Who wants to proceed? I'll let you make your own decision.

MS. CUMMINGS: Why don't you.

MR. DOLL: Okay, if I, if I'm gonna present my case then I'll assume Mr. . . .

MS. CUMMINGS: We want our jury out.

MR. DOLL: Ms. Cummings have the option to whether they want their jury to hear what I'm going to present.

THE COURT: I'll let them choose.

MS. CUMMINGS: We want our jury absent.

THE COURT: You don't want them to hear?

MS. CUMMINGS: Correct.

THE COURT: Fine. Who wants to go ahead [121] first, I'll let you choose.

MR. DOLL: I'll go first.

THE COURT: You'll go first, all right. Then that does help me because we then can have the other jury leave and have that handled. So, how long do you think it's going to take?

MR. DOLL: Your Honor, I have two witnesses I expect to present which would be . . .

THE COURT: Then we want the other jury back certainly tomorrow. Right?

MR. DOLL: I would assume so.

THE COURT: Okay. Why don't we do that. How long do these witnesses going to be?

MR. DOLL: One is a witness that's testified, Bobby Howell, already should be a short witness.

THE COURT: All right.

MR. DOLL: The other one is my client which I would expect to take a little, a little time.

THE COURT: Give me a time sequence approximately.

MR. DOLL: Hour and a half, two hours.

THE COURT: All right. Then I think what we're going to do, we're going to take your one witness and your other witness both in the same day, tomorrow.

MR. DOLL: That's fine.

[122] THE COURT: I think that's the sensible thing because we're bringing back the jury just to hear one witness does make an awful lot of sense. So we'll take care of yours tomorrow morning. We'll have the jury come back and we'll, I can have them told by the court officer. I don't think they have to come back in. Because you'll close in front of each jury separately tomorrow then. I want to remind you that Mr. Stamos because you haven't closed in their presence. So when they do come back tomorrow each one of them, you'll mention that you're closing your proofs at that point.

MR. STAMOS: Yes.

THE COURT: Okay. Fine. So what we'll do is this. We'll have the jury for Ms. Cummings and Mr. Odette return tomorrow morning at ten o'clock. We'll have the jury for Mr. Doll's client to return tomorrow morning at eight thirty.

Now you can have them leave, I'm going to have anybody having any connection with the case who are in the hallway, can we make certain that they're here seated. Is there anybody in the hallway now at all?

If they have any connection with this case. No, if it's another case that's fine, they've got a right to be there.

MR. DOLL: Excuse me, Your Honor.

[123] THE COURT: Yes.

MR. DOLL: I have one witness subpoenaed in the hallway, Bobby Howell. I'd like to have him come in.

THE COURT: All right. We're going to have these people remain here. We'll take the defendants up first so that that's clear. Now we'll take the defendants upstairs. Thank you. Everybody remain here till everybodies cleared away.

(Whereupon, the defendants leave the courtroom.)

MR. STAMOS: When the juries come back tomorrow can I make a brief restatement in terms of the First Degree Murder . . .

THE COURT: Yes, I'll be glad to hear it. Sure. I'm always glad to hear people.

MS. CUMMINGS: So that means we have to be here at eight thirty then?

THE COURT: I assume so, yes. If he wants to make a statement it should apply to everybody.

MR. STAMOS: Yes, I'd just like to look up, find some law.

THE COURT: That's fine. I'm glad to hear you. Whatever you want to do is fine with me.

(Whereupon, court ended in these proceedings at 1:03 p.m.)

PEOPLE OF THE STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

vs File No. 91 45890 FC

DUYONN ANDRE VINCENT, (Filed Nov. 29, 1999)

Defendant.

_____/

VOLUME V-A

BEFORE THE HONORABLE DONALD R. FREEMAN, CIRCUIT JUDGE

FLINT, MICHIGAN – WEDNESDAY, APRIL 1, 1992

APPEARANCES:

For the People: Daniel Stamos, (P23505)
Assistant Prosecuting Atty
100 Courthouse
Flint, Michigan 48502
(313) 257-3232

For the Defendant: Christopher Odette (P27387)
Attorney for Defendant
1036 South Grand Traverse
Flint, Michigan 48502
(313) 232-9460

Recorded by:
Victoria J. Hunt, CSR 2251
Transcribed by:
Victoria J. Hunt, CSR 2251
Diane Baker, CER 5276

* * *

[3] Flint, Michigan

April 1, 1992 – 9:27 a.m.

THE COURT: Mr. Stamos, you had indicated that you wanted some additional time to make a presentation. We have everybody assembled I think all the defendants are here. Fine. I'll be glad to hear you.

MR. STAMOS: Yes, thank you, Judge.

Okay. While this doesn't have any direct bearing on my presentation to the Court in terms of weight I state this merely to impress the seriousness at least of my, my attitude in this that there have been other cases not having anything to do with this case in which the same motion has been brought and I have not opposed it. So I mean I don't want to form a character that's, or appear like somebody that's totally gungho regardless of the facts or anything of that nature.

THE COURT: Fine.

MR. STAMOS: I am basing my argument and my position on the facts as I see it, the Court may not see it that way but I'm basing my position on the facts and the laws I see it pertaining to this case.

And in that regard I believe the law is such that where the evidence has been introduced which could possibly establish premeditation it's the juries province to measure the quantity of the proof bearing on that issue. [4] And that the Court should not substitute its opinion for the juries. And that under the *Hampton* case the evidence should look, be looked at in the light most favorable to the prosecution and that if any reasonable person could deduce the elements of First Degree Murder, and we're

talking about the premeditation and deliberation aspect, then it should be allowed to go to the jury. That doesn't mean that all reasonable people would deduce that, but if any reasonable person could deduce from the evidence looked at in the light most favorable to the prosecution, elements of premeditation and deliberation then the case should be allowed to go to the jury.

In some of the courts, and I just want, I'm using this aspect of my presentation to set the stage and the feeling of that the courts are varied on this issue of premeditation and deliberation, you can't just find one specific case although I found a couple that are somewhat analysis.

The Court, there's been language such as this. The Court in *People vs Moss,* 1976, made this statement. "That while thermal terms dramatically convey a distinction with a difference, are we to say that even a savage attack, attack cannot be premeditated. We do not agree with the implication that First Degree Murder comprehends only cool, calm, deliberate assassination. [5] Such thermal rationale affords a ready vehicle for reversal when the appellate courts philosophy is offended by the jury verdict."

Now it does go on to say to put it more bluntly, premeditation is a question of fact not of law. And then they go on and they say "we are not unmindful of respectable authority to the contrary in this state." Because it does go back and forth.

Some of the factors that the Courts look at cause it is like a case by case and they seem to say in the end, if you read enough of these cases, that you have to be able to find that there's no evidence of First Degree Murder in order to be reversed. I mean if they can find any of evidence of

First Degree Murder they'll, they'll let the trial courts ruling stand, letting it go to the jury on First Degree Murder. In fact, in cases where, where they have reversed they, they just knock it down from First to Second, they haven't reversed the whole case. But, in *People vs Mullaney* the factors are talked about and it says on page 793, and this is at 104 Mich. App. 787. "Factors to be considered when determining whether an accused had an opportunity to give his actions a second look include consideration of the previous relationship between the parties. Here there has been an altercation. The accused actions prior to the killing. Here we have these [6] people . . . " and I'm going to make as factual aspect of my or of my presentation a little more clear after I portray the law to the Court. But we do have them walking back to a car, and that's important, and positioning themselves in a manner to do the shooting. I think that's very important. It says the accused actions prior to the killing. The circumstances of the killing itself and the accused conduct after the homicide. And then in this case it says at the end, "even though evidence tending to establish that defendant acted with premeditation and deliberation is scant, we cannot say that it is as a matter of law insufficient." And what that case was about, the only evidence of premeditation and deliberation in the *Mullaney* case was basically the acts of the defendant after the killing. The planning and they talked about the, the accused conduct after the homicide. Not the other factors. So, and there's a lot of cases that talk about you can find premeditation deliberation from one of these factors. You don't have to have all of them. And it was scant, but they still upheld it.

In *People vs Meyer,* 47 Mich. App. 179 on page 191, it talks about "our own answer to the question of the appropriate rule to follow as to what constitutes premeditation in a First Degree Murder case is not a definition. Rather it is a reaffirmation of the rule of [7] the trier of fact in deciding the degree of guilt of an accused under the following established principals. 1) Premeditation can be reasonably inferred from the circumstances surrounding the killing. Circumstantial evidence. 2) A defendant may not be found guilty of First Degree Murder if he did not have an opportunity to subject the nature of his response to a second look or reflection. IE one cannot instantaneously premeditate a murder," and I had the *Tilly* case which is going to speak directly to that. That's why I think that as I go on the act of, of these people going back to the car is tantamount in my position.

"3) A sufficient time lapsed to provide an opportunity for a second look may be nearly seconds. It's not the matter of time. Merely seconds or minutes or hours or more depending on the totality of the circumstances surrounding the killing." So it recognizes it could be only a matter of seconds depending on the situation of how it happens. "And 4) where it is factually clear that there is no evidence of premeditation the trier of fact may not consider a charge of First Degree Murder." That's where I got that language. But that language is not just with this one case, you can find that language in other cases where the courts look in terms of a standard where there is no evidence. So if there's some, it, it's fine.

[8] And the last in terms of some of the talk as to the law is *People vs Youngblood* 165 Mich. App. 381, on page 387. Talks about "premeditation and deliberation may be inferred from the facts and circumstances surrounding the

killing, including motive. We have motive here. The altercation. As a result of a prior relationship." We have that, it was established during the altercation. "A weapon acquired and positioned." And I think the positioned in terms of going back and I'll get into that a little more later. "A weapon acquired and positioned in preparation for the homicide. Circumstances and events surrounding the killing. An organized conduct or subsequent to the killing. Organized conduct prior to or subsequent." Organized conduct prior to also. All four of them, Gill too, but he didn't do anything once he went back to the car. Going back to the car and positioning themselves and I'll get into that again but I just want to relate the facts of this case to some of this language. And organized conduct prior to or subsequent to the killing suggesting the evidence of a plan.

Now, in regard to all of that, I have two other cases but I want to lay out my factual position here in regard to this case. My basic position is, although it's made stronger by the surrounding circumstances that I'll explain, is that during this altercation we don't have [9] anybody just pulling a gun during an argument and shooting. All right which would be instantaneous. We don't have a situation where people are just carrying a gun and not expecting trouble and trouble develops and the gun is just pulled. We have a situation where there's an altercation and we have these three people walk back to this car, get into this car and two of them, who are the shooters, position themselves on their knees in the back of that car in a position to shoot. And the hatch is then popped open with these people being in a position to shoot, with the driver in the driver's seat and when the hatch pops open it is then that the guns are there, they are shooting at the person or

persons from Hamady that were involved in the altercation.

So you have people who are involved in a group in an altercation walk back and position themselves in a way, together, both, to shoot and then take off. That's much different from just pulling your gun, booming.

Now with just that. Forget the fact that the guns were brought up there expecting trouble. So you have a certain intent there. Maybe not the intent to kill a specific person but you do have that thought about how these guns might be used before they even get up there. Which makes the aspect of them walking back to the car and [10] getting into it even more deliberate and premeditated and organized and thought out. You know with a purpose.

Forget the fact that the guns were fired to see if they worked and forget the fact that there was evidence that people heard from that car that "we got something for you" which signified I asked the witnesses on the stand what did that mean to you, that meant that there was going to be shooting. Forget that fact that it was also heard coming from that car, that "if you don't get away from my car I'll pop you." What did that mean, that I'll shoot you. Forget all that which makes the premeditation, the thought out process even more significant. But if you just take the fact that there's an altercation and people go back to the car and position themselves in a way to shoot somebody that was involved in the altercation thats outside, top hatch up be ready to get away when the car takes off, that should be enough to get me to the jury. That's no different then [sic] somebody getting in an altercation and going home. If the home is you know in the, in the vicinity and getting a gun. There may be a matter of seconds or minutes difference.

But it says here, very clearly in these cases, that if the totality of the circumstances and the reflection and deliberation can be calculated very quickly. If fact, *People vs Tilley* I think really speaks to this. There's a California case too, but [11] *People vs Tilley* really speaks to this clearly.

It's 405 Mich 38. It's a 1979 case. And I'm reading from pages 44 and 45. "A careful review of the testimony in this case persuades us that there was evidence to support the juries's verdict. For purposes of illustration we list several factors surrounding a homicide which support the juries verdict. We do not intend to imply that any one particular factor is essential to a finding of premeditation and deliberation. But that only by reviewing the circumstances as presented to the testimony of the witnesses can a determination be made.

First, we realize when a homicide occurs during a sudden affray this Court has found it would be a 'perversion of terms to apply the term deliberate to any act which is done on a sudden impulse.'" That's what I'm talking about. The Court's smiling but that's what I'm, I've read this case carefully. That's what I'm talking about when you're, when you're fighting and you have a gun and just pull it. That's what the Court's talking about as I go on.

"In this case the testimony presented allows the jury to find that the fighting had ended," because this wasn't a fight. The fight had ended when Tilley obtained possession of the gun. These people went back to the car. The fighting had ended, they went back to the car, it [12] wasn't done during this fight.

"Or too Michel began retreating." The Hamady kids were walking away. We have testimony to that. There was also testimony that Tilley and Moss who were in control of the situation, holding Michel before Tilley started shooting. And then it goes on. "A second consideration is the time required to premeditate and deliberate. While the minimum time necessary to exercise this process is incapable of exact determination the interval between initial thought and ultimate action should be long enough to afford a reasonable man time to subject the nature of his response to a second look." And then they, they go on and they put that together.

"There was an interval between Tilley securing possession of the gun and the first volley of shots as Mickel was retreating. The testimony presented various estimates of the time lapse ranging from one second to one minute." We certainly had a time lapse of them going back to the car. The fight was over. People were getting back in their cars. These people went back to the car and position. I keep going back to that. Forget what was in their mind on the way up there. This certainly does take their actions all the more apparent. Forget what they said from the car about "we'll pop you," "we've got something for you," which certainly makes their actions [13] even more apparent. But just the simple action when the, when this altercation is over. And it was an argument more than a fight, of going back and positioning themselves in that car to shoot someone and get away. Two people in the backseat, on their knees, side by side with the gun point out and the hatchback pops open. It's not even like two people shooting from different windows. The hatch pops open. And it was asked to be popped open.

I ask the Court to look at *People vs Tilley*. There was also a California case that, I can get the cite, I left the cite, and I apologize to the Court. I can get the cite. I have a copy of what I thought was appropriate language. That, where they review what premeditation and deliberation is. And they talk about, number one, facts about a defendant's behavior before the killing. They show, the show prior planning of it. Facts about any prior relationship or conduct with the victim from which the jury could infer a motive. And then three, facts about the manner of the killing from which the jury could infer the defendant intentionally killed the victim according to a preconceived plan. And you can form this and calculate this quickly. That's the point. I've read before that these things can be formed quickly. In fact I think there's in one of these cases there's language to that effect that you can do that quick. And if I have to go back and find it I will. That, that when they walk together back to that car and I keep going back to that, that's organized conduct. It can be taken no other way. That when the hatch pops open there's two people on their hands and knees. That was the evidence. Whether it's believed or not is one thing. Whether it can be argued against is another thing. But I have that evidence to go to the jury with.

It talks about, and I'm going back to this California case. As to the first category, and this is where these two defendants brought a gun into a store. It wasn't a robbery, they just brought a gun into a store. "As to the first category the fact that the defendant brought his loaded gun into the store and shortly thereafter used it to kill an unarmed victim reasonably suggests the defendant considered the possibility of murder in advance." These people took these guns up to this school. We've had testimony

they went up there to fight. That they expected problems. So at least they considered. You can argue, I can infer that here they considered the possibility of using these weapons to kill in advance. Maybe not in the way they did it, but at least that was in their mind.

THE COURT: What's the citation on that case?

MR. STAMOS: This is the California case, [15] I'll have to get that for you, I apologize, and I can get that for you.

THE COURT: All right, I'd like to see that. That's interesting.

MR. STAMOS: "Moreover defendants warning that Chandler and Black should give him the money or he would shoot implied the defendant contemplated the killing." What we have, the words coming from the car. "Get away from the car or we'll pop you" or "I'll pop you." I think it was was the word. Or "we've got something for you."

"It has been recognized that premeditation can occur in a very brief period of time." I'm still quoting from this California case. "The true test is not the duration of time as much as it is the extent of the reflection. Thoughts may follow," this was my language, "thoughts may follow each other with great rapidity and cold, calculated judgement may be arrived at quickly." That's the language I was thinking about, I just hadn't got to it.

"As to motive the evidence showed that immediately prior to the killing Chandler and Black refused to sell beer." Well they're talking about there was a motive in that case, there's a motive in this case. Obviously everybody said they

were shooting at the, at the [16] people from Hamady who were involved in the altercation.

"The law does not," I'm going on, "the law does not require that a First Degree Murderer have a rational motive for killing, anger at the way the victim talked to him may be sufficient."

Then I go on, I think is very important in this California case in terms of the car. "The manner of the killing also suggest the shooting was conceived in advance." The manner, I'm going back to the car, the positioning themselves with their, on their hands and knees in the back of that car, weapons pointed right at these Hamady people and top goes off, the shots, and the car leaves.

And then they finally say, "we conclude the evidence viewed in the light most favorable to the prosecuting supports the finding of premeditated and deliberate murder."

That's basically my position. I can find the cite if the Court will allow me just a moment on this California case. But my basic position is the acts of these defendants, before even going up to Hamady and getting the gun, certainly puts some kind of thought process of using those guns into their minds. Maybe not the exact way they were used but some kind of thought process of using these guns. And then when they got up to Hamady and this [17] altercation started there was organized conduct at that point. The altercation had ended. And they separate themselves from it by walking back to that car and positioning themselves in a way to, in a organized way to shoot at those people from Hamady and to leave. They were hidden in the car, they were protected in that car, they could leave right after the hatch went up with both of

them side by side on their hands and knees, and that's not even paying any attention to the words that came from that car such as "we've got something for you" and they certainly did. "We'll pop you," and they certainly did. I think taken in the total context of how this case happened and with the many statements on the law of premeditation and deliberation that maybe not every reasonable trier or [sic] fact would or will conclude on each and every one of these defendants or any of them that First Degree Murder was, was committed. But certainly there are facts from which a reasonable person could conclude that there was reflection and deliberation. That's my position.

THE COURT: Thank you very much. Comment by other counsel?

MR. ODETTE: Yes, Judge.

THE COURT: What I'd like the other lawyers to talk about if you don't mind, is the factual situation. Now that's impressive what I heard from Mr. Stamos about [18] the circumstances that lead up to this and the language that was used, the position of the parties within the vehicle, the altercation. Those are the things that do bother me and if you'd like to talk about that I'd be very interested in hearing.

MR. ODETTE: Judge, I would but I'd like to speak just very, very briefly to another aspect of this and I think that it's a very significant, it's the significant aspect I believed. And that's the question that yesterday we made arguments to the Court. The Court considered those arguments. We, the Court very distinctively and clearly stated the basis for its ruling and utilized the test of looking at the evidence in the light most favorable to the prosecution. And after doing so, directed a verdict on the

question of the First Degree Murder and indicated the case would proceed to the jury on Second Degree Murder.

Now citing the case of the, I think the rule that governs here 6.419, and there was no reservation of the motion for, reservation of the decision by the Court. The Court issued its ruling. And it would be our position that the Court being vastly experienced and having sat many trials over a substantial, over a period of time, is fully aware of the law concerning First degree Murder. And indicated and made a ruling. Now the Constitution has a provision, the double jeopardy provision, that both the [19] Michigan and United States Constitution, citing from the case of *People vs. Anderson*, 409 Mich., 474, that would suggest that once the Court has made a ruling, once there's been a determination that that is a final ruling. And they indicated that that would apply whether the acquittal, in this case a directed verdict of acquittal, is based on verdict of a jury or the findings of a judge and whether that finding is erroneous or not. Now we would suggest . . .

THE COURT: Counsel, you have to bear in mind, I've not informed the jury of any of these things. You must recall the fact that we did not have the jury even brought back to the room. That because of our schedule and because of the representation made by Mr. Doll as to witnesses and the length of time that would be needed, we decided it might be better to start this morning so as to have some continuity in their testimony.

MR. ODETTE: Right, Judge, I . . .

THE COURT: So the jury knows nothing about any of this.

MR. ODETTE: That's correct, they don't. I'm not disputing that but it's my firm impression when I left the court yesterday that there had been a ruling and that Mr. Stamos had indicated he'd like to have the matter reconsidered and I believe the Court said whatever.

THE COURT: That's right. And I, well I said [20] "yes I'd be glad to listen." Or words to that effect.

MR. ODETTE: Well it's our position that at this point that that decision was made. We . . .

THE COURT: Do you really believe that? You think that when a decision is made that before it's recited to the parties who are directly involved in it and particularly the jury because we're asking now for the jury to not consider certain factors that might be brought to them, that a Court cannot consider what it's done? I don't know that that's right. I, I consider things in great length and I, I try to be an open person, I try to give everybody an opportunity to talk and say anything they want. And I'm not, I'm not a stick in the mud. I just don't stick there and say "well, that's where I am." I try to be open about things and flexible.

MR. ODETTE: That's . . .

THE COURT: You understand what I'm saying?

MR. ODETTE: I do.

THE COURT: And I've not told the jury anything.

MR. ODETTE: I do entirely, I don't dispute any of that. But I, it was my firm impression and belief that the Court had made a ruling . . .

THE COURT: All right.

MR. ODETTE: That . . .

[21] THE COURT: I would much prefer frankly that you go on and discus some of the things that he said about the factual circumstance. If you want to respond to it, if you don't care to, that's fine.

MR. ODETTE: I would suggest what I suggested yesterday quite frankly . . .

THE COURT: All right.

MR. ODETTE: That the issues here are premeditation and deliberation.

THE COURT: That's fine.

MR. ODETTE: Mr. Stamos continues to suggest that guns were taken up to the school with the notion that they were going to be used in an offensive manner, contrary to testimony of witnesses who indicate that, as far as this particular defendant is concerned, that when he went to the school he went or arrived at the school he went to the school. He didn't go to the car with the intention. There can be no inference that his intent of his specific purpose of being there was to utilize these guns in a criminal manner. There's absolutely no dispute about that fact. That, and so any suggestion that the guns were there for, to be used in a premeditated way absolutely fails. There's absolutely no proof before the Court in that regard.

THE COURT: Fine.

[22] MR. ODETTE: And I simply would continue my response from yesterday. That there's a absence of premeditation and deliberation for the reasons that I set forth on the record today. I'd ask the Court to direct the verdict or continue this verdict as Second Degree. Mr. Stamos still, he's indicated he wants to go [sic] the juries. He is no [sic] being precluded to go [sic] the jury, the only question is on what charge.

THE COURT: Fine. Thank you very much. Ms. Cummings?

MS. CUMMINGS: Yes, Judge, on behalf of Mr. Hopkins I would join in all of the arguments Mr. Odette put forth including the procedural and Constitutional ones.

As to the facts as they now are being reargued –

THE COURT: You think double jeopardy has anything to do with this?

MS. CUMMINGS: Yes. I believe once you've directed. A verdict –

THE COURT: Why is that?

MS. CUMMINGS: A verdict that that's . . .

THE COURT: I haven't directed a verdict to anybody.

MS. CUMMINGS: You granted our motion.

THE COURT: Oh, I granted a motion but I have [23] not directed a verdict.

MS. CUMMINGS: I don't need to add to that, I'm simply joining in that argument.

THE COURT: Okay, that's fine. That's fine.

MS. CUMMINGS: As to your specific request of how I would respond to additional comments made today everything I said yesterday stands. In addition to that, Mr. Hopkins stands quite peculiar as to the other two defendants in that he did not have a weapon. And Mr. Stamos keeps using the, the word "they" as if all three of these defendants conducted themselves in the same manner. Mr. Hopkins was by the car. I don't think there's any evidence before you that he acted in concert walking toward a vehicle with some state of mind present. If I heard Mr. Stamos argue he's saying that this decision, he's arguing this decision to shoot and make this killing premeditated was arrived at very quickly. But as an aider and abettor you would also have to find there's some evidence that at the same time a shooter formulated this state of mind that Mr. Hopkins at that same brief state of mind joined in and shared that mental intent. And I don't think there's been any evidence of that.

There's no evidence that Mr. Hopkins was expecting any trouble or that he was, had offered himself up as an ally to any trouble that might occur. He simply [24] was present and it was most interesting I thought when, when Mr. Stamos made the statement, "well, Gill was there too, but he didn't do anything afterward." The state of mind that you have to find for premeditation isn't found in, in what anything, in what occurred afterwards. You have Mr. Hopkins driving away from the scene, after the shooting occurred, and I don't think that gets him in on a first degree charge that he shared the proper state, state of mind in the intent that's required for that and I would request that you reaffirm your decision.

THE COURT: Fine. Thank you very much.

Mr. Doll?

MR. DOLL: Okay what, what we're talking about in this case is the basic difference between First and Second Degree Murder. It's the element of premeditation. The courts have determined that you should look at the totality of the circumstances. Which I think that's what you did when you made your decision yesterday.

To premeditate is to think about beforehand. To deliberate is to measure and evaluate the major facets of a choice or problem. Both describe a thought process which is undisturbed by hot blood. The minimum line time required to develop these thought processes is uncertain. Again, going back to the totality of the circumstances.

The interview between the thought and the [25] action should be long enough to afford a reasonable person time to subject the nature of his response to a "second look." And this was symbol with the law, Michigan law that Mr. Stamos got into. That citation on those, those circumstances are from *People vs Moore* in 31 Michigan Appeals 301 and *People vs Johnson* 99 Michigan Appeals 547.

Now the factors which you may consider in determining whether the defendant had the opportunity for a second look include 1) the previous relationship of the parties. Confining your thoughts to Mr. Perkins previous relationship to these parties, the people he was in the car with, there was none. He didn't know these guys. The only reason he was in the car is that two minutes before he made a determination that the car that he rode in was too full. So he jumped into this car with three other people

that he didn't know. Two minutes later he's at Hamady High School.

Second thing, the defendants actions prior to the actual killings. There's no testimony on this record that the Court can infer that this Defendant, Dameon Perkins, was any way involved in any altercation prior to the shooting at Hamady High School. There's no testimony that he said, said anything about "I'm going to pop you." There's no testimony on this record that he was involved in any argument with anybody in the parking lot. There's no [26] testimony that he said anything, that he did anything or that he was even present at the time that the argument took place.

We've got to infer from the circumstances that yes in fact he was at Hamady High School. But other then [sic] that that's all we know. That's what we're confined with the record at this point.

And then three, the circumstances of the killing itself. I've got a real problem on this case. This particular thing, Judge. Because the only witness that testified that Dameon Perkins, Perkins knelt in the car or the back of this car and shot his gun was Derrick Gill. He's the only person that testified like that. And my problem with that testimony is that his testimony is unreliable, unbelievable and has shown on this record that he's a liar. He's the only person that testified that at Hamady High School there was a gun in Perkins's hands.

Now let's go back to the totality of the circumstances. Given the totality of the circumstances this defendant did not know, was not familiar with any of the people that he's in the car with. The fact that he wasn't involved in any altercation at Hamady High School, that fact that a lying,

unreliable witness was the only person to put a gun in his hand, nobody else, nobody else testified to that, would not make his actions such that [27] constitute premeditation.

The fourth thing to look at is the defendants conduct after the homicide. Now there's not too much evidence on the record. What Mr. Perkins did after the, after the homicide was [sic] occurred other then [sic] the fact that he was in the car. But, you can infer from the circumstances that all of a sudden these guys got in their car. Not only that there were two other cars that were in the same group, those guys got into it at the same time, they all took off at the same time.

Again, going back to the totality of the circumstances, you can't reasonably infer that there was any element of premeditation on behalf of Mr. Perkins that would allow this case to go to the jury on the question of First Degree Murder.

Again, citing *People vs Johnson*, 99 Michigan Appeals, 547. There's no evidence of a plan that Mr. Perkins was involved in. He didn't get the gun, he didn't get the bullets. Those were secured by Duyonn Vincent. He wasn't even in the car at the time that the guns were, were purportedly shot off at North Flint Plaza. The only element prior to the killing that he had a gun, there is testimony that he showed it at the party store, one of the guns. Again, it was not the murder weapon, to one of his friends at the party store. And apparently the gun kind of [28] impressed him. But that's, that's beside the fact that there's no element, evidence of any plan by Mr. Perkins to commit a killing.

So we're back to premeditation. There's no deliberation. There's no showing that the jury could reasonably infer that the case should go to the jury on the element of

premeditation of First Degree Murder by Mr. Perkins given the, given the facts that we presented so far in the Prosecuting Attorney's case. And that's substantiated by the law.

Again, we're back to the totality of the circumstances are not enough in this case to justify a charge of First Degree Murder going to the jury.

THE COURT: Fine, thank you.

MR. STAMOS: Judge, could I just briefly respond to Mr. — just for the record.

THE COURT: Let's move right along. I've got so much to do.

MR. STAMOS: Okay. I think the Court is aware of what's going on but I just want to briefly respond to Mr. Doll only. Because I thought I kept my summation and my position to the law. Not arguing the facts, not arguing believability of testimony cause that's for the jury, that's not for this issue.

MR. DOLL: The Court asked me to argue . . .

[29] MR. STAMOS: Hold it, I didn't, I didn't interrupt.

THE COURT: That's, go right ahead. Let him. What do you want to say?

MR. STAMOS: I just wanted to make that point clear. But in terms of his client specifically, which I didn't get into cause I still, my position is they all went back cause the evidence shows that, to the car. But if he wants to make an issue out of what his client did in terms of getting into this car, his client not only showed the gun

before getting up to Hamady, his client did not have to go back to that car where the shooting occurred at Hamady. His client, in particular, chose to go back to that car. If Mr. Doll wants to make a big issue out of that, chose to go back to that car where the guns were. Where he had gotten into that, the same car he had gotten into where the guns were. Chose to go back to that same car at Hamady, rather then [sic] getting, rather than to get into the car where his real friends were, he chose to go back in the car where the guns were. He chose to position, and I'm talking about his client, Mr. Doll's, he chose to position himself in the back of that car on his hands and knees right alongside of Vincent. He chose to raise that gun right along with Vincent and allow the hatchback to be popped open and then fired. His client chose to do all of those things after [30] they had been up to Hamady for a good portion of time and after an altercation that had happened involving members of their group. That these people, especially Mr. Perkins, chose then to go back to their car where they had some refuge, some hiding ability, some better position to commit this shooting and position themselves in a way that would make this shooting more beneficial to them. Out the window and then take off. And that is organized, calculated thought. Maybe not brilliant thought, we're not talking about levels of thought. But it's thought, thought process that reasonable people could have decided on the way back to that car to just leave.

THE COURT: Well I'm going to consider the argument that Counsel has made. And Counsel should be certainly aware of the fact that there has been no harm that has come about by the Courts ruling earlier. The jury was not alerted or informed in any way whatsoever as to the, the conclusion this Court drew after arguments of

counsel. I'm going to reserve a ruling on it. We'll come back to it a little later on after I hear a good more and think a little bit more about it.

Now I'm basing, of course, the decision upon what we have up until now until such a time as the motion's being made. But I'll reserve the ruling. Okay, we're going to get our jury back then. Now let's [31] see, it's your jury, isn't it Mr. Doll.

MR. DOLL: That's correct, Your Honor.

THE COURT: All right. Do the other people want to be here during that time, what do you want to do? You have a right to, if you want to I'm going to let you stay.

MS. CUMMINGS: My client wishes to be present, Judge.

THE COURT: Be present, fine.

MR. ODETTE: My client so indicates also.

THE COURT: He wants to be here.

MR. ODETTE: Yes, Judge.

THE COURT: Great. Fine.

MR. ODETTE: Thank you.

THE COURT: Good enough. Thank you.

(Whereupon, court ended in these proceedings at 10:07 a.m.)

PEOPLE OF THE STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff, File No. 91 45890 FC

vs. (Filed April 2, 1992)

DUYONN ANDRE VINCENT,

Defendant. /

VOLUME VI

BEFORE THE HONORABLE DONALD R. FREEMAN, CIRCUIT JUDGE

FLINT, MICHIGAN – THURSDAY, APRIL 2, 1992

APPEARANCES:

For the People: Daniel Stamos, (P23505)
Assistant Prosecuting Atty
100 Courthouse
Flint, Michigan 48502
(313) 257-3232

For the Defendant: Christopher Odette (P27387)
Attorney for Defendant
1036 South Grand Traverse
Flint, Michigan 48502
(313) 232-9460

Recorded by:
Victoria J. Hunt, CSR 2251
Transcribed by:
Victoria J. Hunt, SCR 2251
Diane Baker, CER 5276

* * *

[3] Flint, Michigan

April 2, 1992 — 9:19 a.m.

THE COURT: Ms. Cummings, I think we're ready for your jury, is that the next step?

MS. CUMMINGS: Your Honor, my, my client has chosen not to testify therefore we're not putting any evidence on.

THE COURT: Oh, I see.

MS CUMMINGS: So we're ready to rest.

THE COURT: Fine.

MS. CUMMINGS: And proceed to argument.

THE COURT: Fine.

MS. CUMMINGS: So, I don't know how you want to do it. You want to do Mr. . . .

THE COURT: All right, now . . .

MS. CUMMINGS: Mr. Doll's closing and, first and then let us be excused?

THE COURT: Well.

MS. CUMMINGS: I don't know.

MR. STAMOS: I don't care, that's fine.

THE COURT: It doesn't matter . . .

MS. CUMMINGS: That's fine.

THE COURT: If it's one way or the other. And I've reconsidered the ruling that the Court earlier made

and I've decided to let the jury make its own [4] determination on the Degrees. That's where we'll stand now so we'll let them have all those issues submitted to them, First, Second, Manslaughter and you can go on from there. Have you given us any proposed . . .

MR. DOLL: I've got some, Your Honor.

THE COURT: Instructions that you want me to consider?

MR. DOLL: Yes. I've given copies to counsel.

THE COURT: Okay, fine.

MS. CUMMINGS: Judge, I've reviewed the ones that Mr. Odette's prepared. I'm requesting those same ones with the addition of defendant not testifying.

THE COURT: All right. Now let's see what else. Oh, you want reckless and wanton use of a firearm?

MR. DOLL: That's correct, Your Honor.

THE COURT: All right, any problem with that? Did you look at theirs' [sic] yet, Mr. Stamos?

MR. STAMOS: No.

THE COURT: Want to take a look and see what they've got to say?

MR. DOLL: You've got a copy right here.

MR. STAMOS: Judge, while I'm looking at theirs' [sic] the only, the only different instruction I would request would be transferred intent obviously. 'Cause I

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